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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Defendant and Appellant,

v.

ANTHONY LARES,

Defendant and Appellant.

E063988

(Super.Ct.No. INF051722)

OPINION

APPEAL from the Superior Court of Riverside County. Dale R. Wells, Judge.

Affirmed.

Matthew Missakian, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Anthony Lares is serving life without the possibility of parole after a jury convicted him of first degree murder with special circumstances. Defendant appeals from the trial court's denial of his motion asking to reduce the amount of victim

restitution to an amount he would have some chance of paying off during his lifetime.
We affirm.

FACTS AND PROCEDURE

On the evening of August 12, 2005, defendant and a gang associate shot at a home from a moving vehicle that was driven by another gang associate. The bullets hit three people gathered outside the residence, killing a young woman and seriously injuring two young men. One adult and three children, ages 7, 9 and 11, are also listed in the record as victims of attempted murder.

On June 7, 2011, a jury convicted defendant of first degree murder (Pen. Code, § 187, subd. (a))¹ with special circumstances and six counts of attempted murder (§§ 664/187, subd. (a)) The jury also found true a large number of enhancements, including those for gun use, great bodily injury, and gang participation.

At sentencing on September 30, 2011, the trial court sentenced defendant to life in prison without the possibility of parole for the special circumstances murder. The court imposed an additional 13 life sentences plus 165 years of determinate time for the remaining convictions and enhancements. The court also imposed a restitution fine of \$10,000 and \$41,217.74 in direct victim restitution. Defendant's counsel joined in the arguments of counsel for his codefendant asking for the restitution orders to be stayed because it would be difficult for a prisoner serving such a term to earn enough to pay the amount ordered. The net effect of the order would be that any funds deposited by the

¹ All further statutory references are to the Penal Code unless otherwise indicated.

prisoner's family into his prison account would be reduced by 50 percent to help pay restitution. The court stayed the restitution orders pending the outcome of any appeals.

Defendant was re-sentenced on March 14, 2014, following remand from this court after defendant's direct appeal. The sentence was altered in certain respects not relevant here, but the sentence of life without possibility of parole remained.

On May 29, 2015, defendant filed a motion for modification of sentence pursuant to section 1260. Defendant asked that his \$10,000 restitution fine and his direct victim restitution order of \$41,217.74 be reduced to \$200. Defendant argued these orders were based on insufficient evidence of defendant's ability to pay, given defendant's life sentence without the possibility of parole. The trial court denied the request.

Defendant appealed.

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. Defendant argues three grounds for reversing the trial court's decision to deny his motion to reduce the restitution orders to \$200. First, the amounts are excessive under both the state (Cal. Const., art. I, § 17) and federal (Eighth Amendment) constitutional prohibitions on excessive fines because he has no possibility of earning

enough money in prison to ever pay off the amounts within his lifetime. We found no case law supporting this argument. Section 1202.4, subdivision (g) states, “The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant’s inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.” (See also *People v. DeFrance* (2008) 167 Cal.App.4th 486, 504-505 regarding the restitution fine.)

Second, defendant argues the described practice by the Department of Corrections and Rehabilitation of deducting approximately half of the funds deposited in a prisoner’s account by family and friends violates the constitutional rights of those family and friends to equal protection and due process. However, any such claim of constitutional violation would have to be made directly by those friends and family.

Third, defendant has heard “many, many prisoners say” that when a defendant is sentenced to life without the possibility of parole, their restitution orders must be modified to no more than \$200. We have found no authority to support this, and direct defendant to authority to the contrary. (*People v. DeFrance, supra*, 167 Cal.App.4th at pp. 504-505.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The trial court's order is affirmed.

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RAMIREZ
P. J.

We concur:

MILLER
J.

CODRINGTON
J.